

J3RVOWIS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 CR 243 (SHS)

5 ANDREW OWIMRIN,

6 Defendant.

SENTENCE

7 -----x
8 New York, N.Y.
9 March 27, 2019
6:35 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 KIERSTEN A. FLETCHER

18 ROBERT B. SOBELMAN

Assistant United States Attorneys

19 SAM A. SCHMIDT

20 ABRAHAM J. ABEGAZ-HASSEN

Attorneys for Defendant

21
22 ALSO PRESENT: CHRISTOPHER BASTOS, NYPD

J3RVOWIS

(Case called)

MS. FLETCHER: Good evening, your Honor.

Kiersten Fletcher and Robert Sobelman, for the government. We're joined at counsels' table by Detective Christopher Bastos of the New York City Police Department.

THE COURT: Good evening.

MR. SCHMIDT: Good evening, your Honor.

Sam Schmidt and Abraham Hassen for the defendant.

Also Samuel Tureff, our paralegal, is also in the audience.

We're ready to proceed, your Honor.

THE COURT: All right. Please be seated.

Did you say Mr. Tureff is here?

MR. SCHMIDT: Yes. He's sitting in the first row, your Honor.

THE COURT: That's above and beyond. He had his appendix taken out last week.

MR. SCHMIDT: Yes, he did, your Honor. And it was successful. So we're glad that he could make it.

THE COURT: All right.

And Mr. Hassen, you're a father for the first time. But to sit on the same day, one appendix out, one new kid born. Congratulations.

MR. ABEGAZ-HASSEN: I don't know about the appendix.

THE COURT: No, I understand.

J3RVOWIS

1 But I'm congratulating you, sir.

2 MR. ABEGAZ-HASSEN: Thank you very much, your Honor.

3 THE COURT: I'm sorry that got lost.

4 Congratulations on being a father for the first time.

5 It has nothing to do with Mr. Tureff's appendix. I was talking
6 about the coincidence of it being on the same day. And
7 congratulations. It's a wonderful adventure.

8 MR. ABEGAZ-HASSEN: Thank you.

9 I spent the last five nights in the hospital, so my
10 sleep was less than on trial so --

11 MR. SCHMIDT: But I have received a full night's
12 sleep, so I'm ready to go, your Honor.

13 MS. FLETCHER: We all know that's important to Mr.
14 Schmidt.

15 THE COURT: Yes. Let's proceed, everybody.

16 Let me tell you what I have.

17 I have the presentence report revised on February 27
18 of this year, which has a guideline range of 87 to 108 months.
19 I have two letters dated March 12 -- one is document 389, the
20 other is document 390 -- from Mr. Schmidt. And for all the
21 relevant defendants, I have, as I said earlier today, the March
22 13 letter of the government, document 391, and the March 20
23 letter from the government.

24 Is there any additional written information I should
25 have, Mr. Schmidt?

J3RVOWIS

1 MR. SCHMIDT: Yes, your Honor. You should have a
2 submission by me from March 24th.

3 THE COURT: I do. Here it is. It's document 418.
4 Anything else?

5 MR. SCHMIDT: I believe that's it, your Honor.

6 THE COURT: Government, anything else I should have?

7 MS. FLETCHER: No, your Honor.

8 THE COURT: Mr. Schmidt, have you read and discussed
9 all this information with your client? And you've also seen
10 the victim impact statements; correct?

11 MR. SCHMIDT: Yes, your Honor. I saw the large group
12 of victim impact statements a few months ago; I received them
13 from another counsel. And earlier today I saw the two March --
14 later March submissions.

15 THE COURT: Have you read and discussed all this with
16 your client?

17 MR. SCHMIDT: I've read all that's necessary relating
18 to almost all of the letters.

19 THE COURT: Do you want more time to discuss these
20 matters with your client? I want to make sure you've had a
21 full opportunity -- and taken advantage of that opportunity --
22 to review the written submissions. I take it you have.

23 MR. SCHMIDT: I have, your Honor. I do not require
24 any additional time.

25 THE COURT: All right.

J3RVOWIS

1 Mr. Schmidt, do you have objections to the findings of
2 fact in the presentence report?

3 MR. SCHMIDT: Your Honor, the only objection that we
4 have is the role in the offense. As stated in our March 12th
5 submission and in the reply, the March 24 submission, we
6 believe that Mr. Owimrin should be considered a minor
7 participant.

8 THE COURT: Show me where that is. Are you asking
9 for -- you're not asking for four points down, you're asking
10 for three, I gather?

11 MR. SCHMIDT: Your Honor, I think that we did not set
12 a number, so -- but I think more realistically a two-point
13 reduction would be the most appropriate number.

14 THE COURT: Where in your submission is this argument?

15 MR. SCHMIDT: In my March 24th, your Honor -- excuse
16 me, my March 12th --

17 THE COURT: It's on page 14.

18 MR. SCHMIDT: Almost there.

19 THE COURT: Under 3B1.2.

20 MR. SCHMIDT: That is correct, your Honor.

21 Your Honor, to some extent, our position with role in
22 the offense is a concurrent argument with the relative
23 culpability of Mr. Owimrin with the other defendants charged in
24 this case. And we do comment on the government's letter of
25 March 13th in our March 24th letter where the government sets

J3RVOWIS

1 these so-called tiers. And we further discuss how Mr. Owimrin
2 should not be in the same tier as Mr. Kavner, Mr. Quirk,
3 Mr. Medeiros, or Ms. Marcus.

4 THE COURT: I'm not concerned about the tiers. That's
5 the government's view. If your argument is that he's less
6 culpable than the government thinks he is, is that what you're
7 telling me? You can argue that. You can tell me about that.

8 MR. SCHMIDT: Yes, your Honor.

9 THE COURT: I don't care about the tiers.

10 What I'm talking about now is the guideline
11 calculation.

12 MR. SCHMIDT: I think, your Honor, factually --

13 THE COURT: You seem to be asking -- although it's a
14 little hard -- for a mitigating role under 3B1.2.

15 MR. SCHMIDT: That is correct. That is correct.

16 Your Honor, I don't think we actually have a factual
17 dispute between us and the government as to Mr. Owimrin's role.
18 What I think the dispute is, that the government does not
19 consider that role a minor role as per the guidelines. And we
20 believe that it is a minor role as per the guidelines.

21 As I set forth in my submissions, other than
22 Mr. O'Reilly -- which I will not consider because of the fact
23 he did not plead guilty to the same offense, he just pled
24 guilty to the obstruction count -- and as to Mr. Ketabchi --
25 whose role was so obviously, both time-wise and geographically,

J3RVOWIS

1 separate from my client -- that everyone else charged in this
2 indictment and related indictments appear to have a
3 principal -- an ownership of businesses that are related to the
4 industry.

5 THE COURT: No, he wasn't an owner, but he clearly --
6 I don't mean to cut you off, sir. He wasn't an owner, but he
7 clearly didn't have -- he wasn't a minor participant; he was
8 very active in terms of selling. In fact, he was aggressive
9 under the urging of Arash Ketabchi.

10 MR. SCHMIDT: Well, actually, your Honor, he has never
11 been described as aggressive. Neither Mr. Finocchiaro nor
12 Mr. Sinclair described him as aggressive. So, no, he was not
13 aggressive.

14 THE COURT: Well, those two gentlemen would have
15 thought that aggressive is a good thing; they wanted their
16 salesmen to make sales.

17 MR. SCHMIDT: No, I understand that. But I asked
18 those questions to both Mr. Sinclair and Mr. Finocchiaro about
19 who are the aggressive persons, they answered who were the
20 aggressive persons. And when I asked them if they considered
21 Andrew aggressive, they said no.

22 THE COURT: All right. Fair enough.

23 MR. SCHMIDT: That's one of the issues.

24 Now, what happened in 2015 was that the Sentencing
25 Commission tried to --

J3RVOWIS

1 THE COURT: Sir, I'm trying to do this in an orderly
2 fashion.

3 MR. SCHMIDT: Sure.

4 THE COURT: What you're arguing now is the guideline
5 calculation. I'm asking whether you have any objections to the
6 findings of fact.

7 So is there a finding of fact in that PSR that you
8 want to object to?

9 MR. SCHMIDT: Your Honor, I think that there was --

10 THE COURT: I'm not talking about the guideline
11 calculation.

12 MR. SCHMIDT: I think there was one fact, I think,
13 that they put my client's name that made it appear like he
14 was --

15 THE COURT: Just find the paragraph.

16 MR. SCHMIDT: It's on page 13, your Honor, of the
17 March 12th submission.

18 THE COURT: No, no. Look at the presentence report.

19 MR. SCHMIDT: Paragraph 16 of the PSR.

20 THE COURT: What's your objection?

21 MR. SCHMIDT: Andrew Owimrin did not operate. He was
22 a salesman.

23 MS. FLETCHER: Fine, your Honor. An Andrew Owimrin
24 can be removed from paragraph 16.

25 THE COURT: Done.

J3RVOWIS

MR. SCHMIDT: 16. 16.

THE COURT: 16. Paragraph 16. I am deleting Andrew Owimrin from paragraph 16.

Anything else?

MR. SCHMIDT: No other factual --

THE COURT: Government, any objections to the findings of fact?

MS. FLETCHER: No, no objections to the findings of fact, your Honor.

But point of clarification. I understand the Court to be deleting Andrew Owimrin from the paragraph of 16, but not from the chart that follows within the same paragraph.

THE COURT: Yes, that's correct.

MS. FLETCHER: Agreed.

THE COURT: All right.

I adopt the findings of fact, except to the extent of in paragraph 16, not the chart, the paragraph itself --

MR. SCHMIDT: Your Honor --

THE COURT: -- I'm deleting Andrew Owimrin.

MR. SCHMIDT: Your Honor, there's actually -- I just noticed one thing. It doesn't require really for it to modify the PSR, because it's not about my client. But under the Vanguard Business Solutions, they only list Joseph McGowan and Jack Kavner. And as I set forth in my submissions, that Mr. Diqarto and Mr. Quirk were also owners in business, so

J3RVOWIS

1 while I don't need their names to be inserted in there, it is
2 part of my submission.

3 THE COURT: All right. I hear what you say.

4 I adopt the findings of fact in the presentence
5 report.

6 Tell me what you want me to know, sir. And you know
7 obviously that I presided over the trial. You know because
8 I've told you I've read all of this information. So go ahead.
9 You know also that it's late, but I'm here to give you whatever
10 time the parties want. This is an important issue, obviously.

11 MR. SCHMIDT: Your Honor, the two issues involving the
12 guidelines are our position that Mr. Owimrin should have a
13 minor role, and I believe the government's position that
14 obstruction of justice is appropriate. And so before I get
15 into my overall picture -- actually, take it back. That's part
16 of the overall picture that I set forth in both of my
17 submissions. And role of the offense is also important, and
18 perhaps even more important than role in the offense with the
19 guidelines, because the guidelines really help your Honor with
20 a determination of the appropriate sentence. However, it
21 shouldn't be anchored with the guidelines. And I think the
22 Court of Appeals has indicated that it's not really a starting
23 point, it's just one of the points to consider.

24 THE COURT: No, I think the cases say it's the
25 starting point in the analysis. I determine what the

J3RVOWIS

1 appropriate guideline range is, but it's not entitled any
2 presumptions.

3 MR. SCHMIDT: As I set forth in my submissions, every
4 single other person, other than Mr. Ketabchi and
5 Mr. O'Reilly -- I'm going to ignore them for now so I don't
6 have to keep on making exceptions to them. Every other person
7 had been a long-term -- had long-term involvement in
8 telemarketing fraud at some company or the other; most of them
9 at The Tax Club, some of them even before that, at Educational
10 Direct, and some of them in different companies.

11 Every single one of them, except for perhaps
12 Mr. Medeiros, were a principal in some company that was
13 involved in telemarketing; they were owners or part-owners of
14 some company was involved in it. All of them knew the industry
15 from top to bottom, from all of the participants, everything
16 that was needed to run these marketing companies. All of them
17 knew that except for the one person who was indicted, who was
18 merely a salesman. Yes, we are not arguing that some of the
19 things that he did were terrible. Your Honor understands that.
20 But he was this important, but small part.

21 And one of the things that the 2015 amendment to the
22 guidelines discuss are the things that specifically say even
23 though somebody was an absolute necessary or essential part of
24 the conspiracy, that does not mean he should not receive a
25 minor role adjustment. That's on page 14 of my submission from

J3RVOWIS

1 March 12.

2 And it sets forth not a total, but a good number of
3 examples of what makes somebody receive a role enhancement.
4 And Mr. Owimrin fits in every single category of what makes
5 somebody eligible for a role enhancement. And every single
6 person except for Mr. Medeiros, who may not own the company,
7 but brought in Youngevity and, sort of, ran in Youngevity, all
8 principals who -- but all of them knew and were benefiting in
9 some other way for every single one of those points.
10 Completely different than Mr. Owimrin.

11 It recognizes that Mr. Owimrin, in some of the
12 documents that we saw during trial and one of the documents
13 that we submitted, was one of many salespeople. And, in fact,
14 in one of the documents I showed was one of the
15 lower-performing ones, who made almost exactly the same as
16 Reagan Owimrin did during that same period of time, which was
17 either, percentage-wise, 20 percent, 30 percent, or 40 percent
18 of what some of these other people have made. So he even
19 wasn't a big performing one.

20 And remember, he's charged not just in a little bit,
21 he's charged in that whole conspiracy starting in 2013 and
22 ending in 2016.

23 So in his role, he had none of the discretion, always
24 had to have the permission of somebody to do anything other
25 than sell what he was told he could sell. I'm not talking

J3RVOWIS

1 about what ultimately the guidelines should be, but just the
2 role that he had in this whole thing was one of the least of
3 the people charged in this conspiracy.

4 And as an analogy, I use that his role was less than
5 many of the people who the government decided, for whatever the
6 reason -- and they have the right to do so -- not to charge.

7 So I think that the guidelines should be reduced by
8 two levels to bring it down to whatever the numbers would be.

9 THE COURT: That's your minor role adjustment under
10 3B1.2; correct?

11 MR. SCHMIDT: That is correct.

12 THE COURT: All right.

13 MR. SCHMIDT: Now, would you like me to continue or do
14 you want the government to discuss --

15 THE COURT: Let's deal with the minor role adjustment.
16 I'm not inclined to give it, as I understand the application,
17 which makes him substantially less culpable than the average
18 participant in the criminal activity.

19 He was the core of the criminal activity. He wasn't
20 Sinclair, he wasn't Finocchiaro, he wasn't Arash. But the
21 salesmen are the workhorses of this operation. He was not,
22 therefore, in the instant, which is the implication of your
23 remarks. As a salesman, he's not substantially less culpable
24 than the average participant --

25 MR. SCHMIDT: Your Honor --

J3RVOWIS

1 THE COURT: -- in the activity. That's my
2 inclination. Let me hear from the government.

3 MR. SCHMIDT: We're talking about the average
4 participant charged, not the average participant, counting
5 everybody who hasn't been charged or hasn't even committed a
6 crime. And the people --

7 THE COURT: I think my statement stands for whether
8 it's the average participant in your average telemarketing
9 scheme, or whether it's the average participant in this
10 telemarketing scheme, or whether it's the average participant
11 charged in this telemarketing scheme. Under any of those
12 rubrics, he is not substantially less culpable.

13 But I don't want to prejudge it. I heard what you
14 said. Let me hear from the government.

15 MS. FLETCHER: I think your Honor has it exactly
16 right.

17 Andrew Owimrin in this case is the quintessentially
18 average participant in this scheme. He is not a minor
19 participant. There are plenty of salespeople who had a far
20 less significant role than he did. There are also employees
21 employed at the telemarketing floors who were not salespeople
22 at all, whose role was significantly less.

23 For example, there were, as your Honor heard at trial,
24 the appointment setters, so the people who would call the
25 customers and set up appointments for them to get on the phone

J3RVOWIS

1 with salespeople. Those individuals are participants in the
2 criminal activity, but they are not average participants; they
3 are below average.

4 What's happened in this case is that the government,
5 in its discretion, did not charge individuals who were below
6 average with federal crimes here. We chose to charge only
7 those individuals who were average members of the conspiracy or
8 above them. And Andrew Owimrin falls within that.

9 Just looking at the fact-based determination that the
10 guideline calls for, he understood the scope and structure of
11 the criminal activity, the acts that he performed in his
12 responsibility and discretion. In getting on the phone with a
13 salesperson, he is -- I'm sorry. In getting on the phone as a
14 salesperson, he is master of the sales call. Yes, he took
15 direction from others; but he has decision-making authority
16 about what to say on the call and is not just being asked to
17 perform certain tasks.

18 He also has a pecuniary interest in the criminal
19 activity. He receives commissions for the sales that he makes;
20 he's not just paid for performing tasks.

21 And so as the guideline makes clear and as, I think,
22 trial proof makes clear, as well, he is an average participant;
23 he is not entitled to a minor role adjustment.

24 THE COURT: All right.

25 MR. SCHMIDT: Your Honor, very briefly.

J3RVOWIS

1 THE COURT: Yes.

2 MR. SCHMIDT: One, he did not have the discretion. As
3 you heard in the testimony, he was supposed to follow the
4 script. That's not having discretion. If he's going to go
5 anywhere off of the script, he needed permission. So he did
6 not have discretion.

7 Scope and structure --

8 THE COURT: Well, he certainly wasn't an operator of
9 the businesses or an owner, that's for sure.

10 MR. SCHMIDT: The scope and structure of the criminal
11 activity, you heard how complex the structure was. Mr. Owimrin
12 had an idea of what he was supposed to do. He got leads, he
13 took the leads, he made the phone calls, then he gave it over
14 to the next person on the line. And then what happened there,
15 he rarely dealt with fulfillment at all. He knew it existed,
16 but he didn't know the scope of this kind of activity and how
17 they got the leads.

18 And it's not that he had pecuniary interest in it,
19 it's the degree of the pecuniary interest. He got a percentage
20 of his sales, period. The pecuniary interest of somebody who
21 is getting more than that would make the difference.

22 So I understand, your Honor. I think that clearly he
23 was an essential part of the enterprise. But if you look at
24 the numbers of what people sold -- you had Chris Wilson selling
25 more, you had Diquarto selling more, you had everybody else

J3RVOWIS

1 other than Reagan, who sold about the same amount as our
2 client -- there is no way that in the enterprise he is more
3 than any salesman could possibly be.

4 He was involved obviously --

5 THE COURT: What do you do with the government's point
6 about all of the appointment setters? They were described
7 differently as either secretaries or appointment setters; all
8 the calls went through them and then they assigned them to the
9 salesperson. The government is arguing there were a number of
10 those, and there were.

11 MR. SCHMIDT: One, they were not charged, your Honor,
12 in the instant indictment. So in the instant indictment --

13 THE COURT: Well, I don't know where you get the
14 requirement of the instant indictment. It says "in the
15 criminal activity." 3A says "average participant in the
16 criminal activity."

17 MR. SCHMIDT: Your Honor --

18 THE COURT: All right. Let's move on.

19 I understand the argument.

20 I am not finding that he is substantially less
21 culpable than the average participant in the criminal activity;
22 and he's not entitled to a mitigating role adjustment under
23 3B1.2(a) or (b).

24 All right. Let's move on.

25 What else?

J3RVOWIS

1 MR. SCHMIDT: I think the next issue within the
2 guidelines would be the government's position on obstruction.

3 THE COURT: The perjury enhancement, two points.

4 Government, do you want to make it, the argument?

5 Are you still seeking it?

6 MS. FLETCHER: We are, your Honor.

7 And the reasons for the argument are set forth at page
8 7 and on to 8 of our submission.

9 Your Honor, we identified in our submission a number
10 of specific instances that Andrew Owimrin lied about during his
11 testimony. It was not something that was subject to confusion
12 or mistake; it was a specific, elaborate explanation for some
13 of the most damning evidence against him, in particular, about
14 the meaning of the Charlene Foster recording, the statements
15 that he made about who actually sold Jane Thompson the \$150,000
16 equity investment in A-1 business.

17 There were a number of examples. And so for the
18 reasons set forth in our submission, the obstruction, the two
19 points for obstruction should apply to Mr. Owimrin.

20 THE COURT: All right. Thank you.

21 MR. SCHMIDT: Your Honor?

22 THE COURT: Yes.

23 MR. SCHMIDT: If you see my reply submission, starting
24 on page 7, the government is wrong. This is not an issue of --
25 this is a factual issue that they are making that they are

J3RVOWIS

1 wrong.

2 For example, Ms. Foster, this was not a telephone
3 conversation about just charging somebody's charge card because
4 they could do it. They sold the products that they charged
5 for. Now, it's part of the fraud, I understand that, but this
6 wasn't just a charge out of nothing; this was a charge -- she
7 signed the agreement. She sent it back to A-1. And I provide
8 it on Exhibit E, the signed contract by her and the first page,
9 which were the things that were sold to her.

10 In fact, what was done was Mr. Ketabchi did not want
11 to have \$20,000 on one card. So as you can see from the
12 exhibits, there were \$14,999 on one card, and \$5,000 on the
13 other card. So this is not just a makeup charge; this is for
14 the product sold.

15 And more telling than that, your Honor, is both
16 Ms. Foster, in her deposition, and Mr. Owimrin ended up getting
17 it wrong. They both made a mistake in their testimony.

18 Mr. Owimrin testified that besides the Bizop product,
19 he sold Youngevity to her, because he heard her testify that
20 she just had to go out and get the checks from the mailbox. In
21 fact, he did not sell Youngevity. I have both indicated it in
22 here and in one of the records that we attached in the original
23 submission indicate that she was not a person who bought
24 Youngevity. And that --

25 THE COURT: All right. Let me just render a decision

J3RVOWIS

1 here.

2 I'm not giving him two points up under 3C1.1, that
3 the -- I have to find a willful impediment to or obstruction of
4 justice or an attempt to do so. And I'm not finding that in
5 this case.

6 I have to find that it's a witness who gives false
7 testimony concerning a material matter, with the willful intent
8 to provide false testimony, before applying an obstruction
9 enhancement based on perjury.

10 I have to find by a preponderance that the defendant
11 willfully and materially committed perjury, which is the
12 intentional giving of false testimony as to a material matter;
13 that is, that Owimrin consciously acted with the purpose of
14 obstructing justice. That's *United States v. Thompson*, that's
15 *United States v. Galan*, *United States v. Pena*, *United States v.*
16 *Agudelo*. There's another major one, *United States v. Dunnigan*.

17 I'm not giving two points for obstruction.

18 That's, I think, the only issues on the guideline
19 calculations.

20 MR. SCHMIDT: That is correct, your Honor.

21 THE COURT: All right.

22 I'm adopting the findings of fact in the presentence
23 report.

24 Tell me what you want, sir, that you haven't told me
25 already either in your writing or in your presentation today.

J3RVOWIS

1 There's no question that he was an active salesperson
2 here. He was important. Whether he was successful or not is a
3 separate question. He's important to the operation.

4 Was he following directions of Arash? Yes. But he
5 still was defrauding people. And he knew what he was doing.
6 He should have taken the auxiliary policeman job, but he
7 didn't. He knew he was selling a scam.

8 MR. SCHMIDT: Your Honor, there is no dispute, I
9 believe, because the government actually writes in their
10 submission, in asking for a higher-than-guideline sentence for
11 Arash Ketabchi, that Andrew Owimrin was one of the two people
12 brought in who had no record, had no knowledge of the industry,
13 obviously, therefore, did not know what was --

14 THE COURT: You're right. He had no record, you're
15 absolutely right. And he didn't operate any of the businesses.
16 He had absolutely no criminal history.

17 His mother's letter says that codefendants took
18 advantage of him because he was a drug addict. They probably
19 did. That doesn't really change what he did.

20 MR. SCHMIDT: It doesn't change, your Honor. And
21 we're not asking for a lower sentence because it changes it.
22 But what it does do is put Andrew Owimrin in a completely
23 different category than every other person in this case. And I
24 mean every other person.

25 THE COURT: Everybody is an individual. My job is to

J3RVOWIS

1 distinguish between the individuals. Everybody has separate
2 circumstances.

3 MR. SCHMIDT: I understand that.

4 THE COURT: He's a great uncle. He's got lots of
5 letters here. Lots of cousins weighing in that he's a fine
6 person. I'm sure he is, but he committed a serious crime.

7 MR. SCHMIDT: That's not my point, your Honor.

8 My point is you have a young man who've never done
9 wrong, who's done everything he's supposed to. And he's
10 brought into this industry and taught by masters, by Mr. Slick
11 himself, right, and Mr. Ketabchi to do these things.

12 And there's a couple of very important points.

13 First, when somebody enters into a criminal enterprise
14 knowing it's a criminal enterprise, that says something about
15 the person. And that should be considered.

16 When somebody enters into a criminal --

17 THE COURT: He knew it pretty quickly, right?

18 MR. SCHMIDT: Well, no, no, Judge, our position is not
19 that.

20 THE COURT: He couldn't get out once he realized what
21 he was in for?

22 MR. SCHMIDT: No, you're jumping ahead of me, your
23 Honor. But there is a difference.

24 When somebody enters into a known criminal enterprise,
25 they say something about their morals, their belief, what kind

J3RVOWIS

1 of person they are.

2 When somebody is in what they originally thought was
3 to be a legitimate business -- and both Mr. Finocchiaro and
4 Mr. Sinclair kept on talking about or answered my question,
5 they tried to stay in the gray area, they tried to give the
6 salesmen the right thing to do, and this is just supposed to do
7 the right thing, all right. They didn't tell the salesmen who
8 weren't involved in the industry ever before that the right
9 thing still might be illegal. They didn't say that.

10 So yes, Andrew testified. And he testified in a
11 manner that really walks the line of admitting conscious
12 avoidance. And I understand that. But he heard other people
13 doing it wrong, and they got punished.

14 So there's a difference between somebody who goes into
15 this criminal scheme as an innocent unknowingly, right, and
16 then learns that there's something wrong, like his brother
17 mentioned to him and says, This sounds, you know, pretty
18 scummy, maybe you should get out, and stays in it. There's a
19 difference. It's a different person, a person who would not
20 have gone in to this business if he was told what this business
21 was really like.

22 THE COURT: I'm having trouble with that argument.

23 Let me tell you what I think your argument is. And if
24 I'm right, then I disagree with you.

25 I think your argument is he didn't realize it was a

J3RVOWIS

1 scam when he went in. And once he learned it was a scam and
2 didn't get out, that's different than somebody who knew it was
3 a scam from the beginning and didn't get out.

4 Is that what your argument is?

5 MR. SCHMIDT: Almost.

6 My argument is that there were things that were
7 occurring that should have caused him to look at it differently
8 than he looked at it when he entered into there.

9 Now, the problem that occurred, your Honor, at that
10 point was that he started using Oxycodone. He started using
11 Oxycodone and was fed the Oxycodone by his bosses.

12 THE COURT: Right. They took advantage of him.
13 Correct.

14 MR. SCHMIDT: And by that time, your Honor -- and
15 notice that I mentioned in my submission that even when
16 Mr. Finocchiaro talked to the government, he said something
17 that Mr. Owimrin, he was good for a while, right? And I think
18 that meant that he was, like, doing everything that he was
19 supposed to. And then he became more under the influence of
20 Mr. Ketabchi and other -- and drug-using and bad people like
21 Wilson and Diquarto and others, and his judgment was skewered.

22 That's not an excuse; that's an explanation why a good
23 person like Andrew Owimrin, who was a good person, right, did
24 not make the right decisions in walking away when things
25 started looking not so good.

J3RVOWIS

1 But that means --

2 THE COURT: He didn't get out when he realized he was
3 committing crimes day in and day out, that's what you're
4 telling me.

5 MR. SCHMIDT: He didn't get out when he should have,
6 when he knew what was happening in the place that he was
7 working was wrong.

8 THE COURT: Does he have any sense of the devastation
9 he's wreaked on totally unsuspecting, innocent people?

10 MR. SCHMIDT: Absolutely. He has that.

11 But he did not have that certainly in the first year,
12 because he had so little contact with chargebacks, with the
13 complaints. He dealt with a few of them --

14 THE COURT: He dealt with chargebacks. He tried to
15 save accounts.

16 MR. SCHMIDT: Sometimes he did. But you also heard
17 Ms. LaMorte. Ms. LaMorte testified she spoke to him. She said
18 she wanted out; she wasn't happy with it. And he didn't try to
19 talk her out of it, because that's who he is. Ms. LaMorte
20 talked about how Andrew was doing things the right way.

21 So he wasn't doing wrong things all the time.

22 And I think the best example, Judge, of what ended up
23 happening, the worst thing was Ms. Thompson. It's clear. It's
24 \$200,000. But first Ms. Thompson -- first of all, Brooke
25 Marcus already squeezed Ms. Thompson for \$80,000 before she

J3RVOWIS

1 introduced him to Arash and his company.

2 THE COURT: If I remember, Marcus thought he wasn't --
3 his pitch wasn't good enough, so she was going to help him with
4 his pitch, right?

5 MR. SCHMIDT: And she was the one who was -- and
6 she -- if not for her, Ms. Thompson would not have purchased
7 the stuff that Andrew was selling, partly because, yes, he did
8 sell the Bizop stuff that he was familiar. That was the first
9 sale for, I believe, \$20,000. All the other sales were these
10 merchant accounts, either the machines or merchant account,
11 some scheme, right, that he knew nothing about at the time
12 because he never sold anything like that. So that was
13 orchestrated by Brooke Marcus, not even by Arash Ketabchi, but
14 by Brooke Marcus. Brooke Marcus is the one that used Andrew as
15 another party, because she didn't want to go back to her lead,
16 to make the sales.

17 THE COURT: So he's not a free agent is the argument.

18 MR. SCHMIDT: No --

19 THE COURT: When he was convincing people to buy this
20 nonexistent product, and when he was trying to save the sale
21 from chargebacks, he is totally innocent?

22 MR. SCHMIDT: Judge, the testimony about the defendant
23 dealing with chargebacks was on a few occasions when he was
24 with Sinclair and Finocchiaro. There are a few occasions --

25 THE COURT: Pretty damning, right? Pretty damning.

J3RVOWIS

1 It all builds up.

2 MR. SCHMIDT: Well, I understand. But do you know
3 what we have? We have one example of somebody trying to get
4 out of a contract that we've heard the person testify. And
5 this is how persuasive Andrew was to convince Ms. LaMorte not
6 to cancel. He didn't. She wanted to cancel. He said, Okay,
7 and. He was nice about it. And he didn't try to make her
8 uncanceled the order.

9 So we're talking about somebody who was magnitudes
10 different, magnitudes different, than the other people in this
11 case. Magnitudes different than Wilson, magnitudes different
12 from DiQuarto, magnitudes different from McGowan, magnitudes
13 different from Medeiros, magnitudes different from Ketabchi and
14 all of the other people there. Magnitudes, Judge, not just a
15 little different.

16 THE COURT: Well, I said earlier I didn't care what
17 the government's tiers were, and really T-I-E-R-S. But they do
18 have -- I was surprised to see they have Owimrin on the bottom
19 of Tier 3, so I'll want the government to talk about that. I
20 actually see him as higher than that.

21 Go ahead.

22 MR. SCHMIDT: I think it's alphabetical, your Honor.
23 And the people in Tier 3 --

24 THE COURT: Oh, I didn't realize that.

25 MR. SCHMIDT: I didn't realize that at first also.

J3RVOWIS

1 THE COURT: Each tier is alphabetical?

2 MR. SCHMIDT: No, not each tier. It looks like Tier 3
3 is, unless it's by accident. Oh, it's not alphabetical. I'm
4 wrong.

5 MS. FLETCHER: It's not alphabetical, your Honor.

6 THE COURT: It's your view of relative culpability.

7 MS. FLETCHER: Within tier, yes, your Honor.

8 THE COURT: Even within each tier; correct?

9 MS. FLETCHER: Yes, your Honor.

10 THE COURT: All right. So I'm correct.

11 Go ahead.

12 MR. SCHMIDT: So that's even better for me.

13 I appreciate it.

14 But the people in the same tier --

15 THE COURT: But I don't see him that way.

16 MR. SCHMIDT: Here's the problem, Judge: I read
17 through the 3500 material of all those other people since the
18 trial is over, who did not testify, right. And you have Jack
19 Kavner, who owned a part of one of the companies. The
20 government called him the COO of two companies. He ran it; he
21 was a -- he was a drug dealer, he started in Educational
22 Direct. So he's been involved in these schemes since college
23 or just after college, the same thing as Quirk.

24 You're comparing Andrew Owimrin and you're saying he's
25 more because he's a salesman. All these people are more than

J3RVOWIS

1 salesmen.

2 He was involved, in what we heard here, Ms. Thompson,
3 the worst thing that the government has presented. I
4 understand that. But he was simply following what Brooke
5 Marcus told him how to sell, what Bill Sinclair told him how to
6 sell, what Arash Ketabchi told him how to tell. And he's, as I
7 said, magnitudes different because he is the only one that came
8 into this, of the people charged, who wasn't a criminal to
9 start with. He wasn't a criminal. All these other people were
10 criminals.

11 THE COURT: He came out as a criminal; he's now a
12 federal felon. And my job is to determine what sentence is
13 appropriate.

14 MR. SCHMIDT: That's correct, your Honor.

15 And you have to take the individual, right. And the
16 elements are, yes, the crime that the person has committed, I
17 understand that. But you also have to take the individual --
18 and I said it in this, that this is the first time that I
19 really have ever addressed a court in saying that my client got
20 into trouble because he was brought into trouble by other
21 people.

22 I tell people who write letters, my clients, and I
23 remind myself, don't do that, because it makes it sound like
24 he's not accepting responsibility for what he did. But in this
25 case, that's not the issue. In this case, it is exactly what

J3RVOWIS

1 happened. You had a good, honest, not terribly educated young
2 man who was a wonderful, decent person to everyone around him,
3 brought into and put into this -- the word I'm looking for, den
4 of thieves, hive of snakes and whatever.

5 THE COURT: Nest of vipers.

6 MR. SCHMIDT: Nest of vipers, thank you, your Honor.
7 Brought into this nest of vipers.

8 And when you have somebody who is like him, right,
9 this young man who has no business experience, who really did
10 not have a full childhood because he was working -- he left
11 school at 15, but was even working before then, and you put him
12 in with this den of thieves, a slick den of thieves, a slick
13 nest of vipers, like Sinclair, who can convince anybody of this
14 is wonderful, and he came like them in a much less magnitude
15 way.

16 And yes, he has a sweet voice and this nice voice that
17 made him a good salesman. But he was not as good as the other
18 people who were more aggressive, who were more nasty, who had
19 more chargebacks. He was magnitudes different than them,
20 Judge. And I don't want to -- I do want to keep on repeating
21 myself, because it's every other person here, and even the
22 people in Tier 3 with Mr. Owimrin were so much more important.

23 And even in Tier 4, Mr. Quiles, your Honor, while he
24 didn't make the phone calls, then he did work for Sinclair and
25 Finocchiaro and made phone calls for them before he found it

J3RVOWIS

1 more lucrative to go into "fulfillment."

2 THE COURT: Why don't you finish up, sir.

3 MR. SCHMIDT: And he made millions more dollars than
4 my client.

5 So my client really should be at the bottom, and not
6 just at the bottom, but magnitudes different than the people
7 above him.

8 THE COURT: All right. Thank you.

9 Government.

10 MS. FLETCHER: Thank you, your Honor.

11 THE COURT: Be as succinct as you can.

12 MS. FLETCHER: I will, your Honor.

13 Just a couple of points that I want to be sure that I
14 touch on.

15 One of the things that makes Andrew Owimrin different
16 than everyone else in this case, except for Shahram Ketabchi,
17 is he absolutely had no experience in the telemarketing
18 industry; he absolutely was lulled into this by other people;
19 he absolutely had a serious drug addiction. He may, in many
20 ways, be a good person.

21 But even today, even after listening to Jane Thompson
22 testify at trial, even after listening to the other victims in
23 this case, he still has not accepted responsibility.

24 I take the Court's ruling with respect to the
25 obstruction enhancement, but he absolutely lied during his

J3RVOWIS

1 testimony. And he was convincing. He lied with a smile on his
2 face. He lied in a sweet way. He wasn't like Arash, he wasn't
3 a railroader.

4 Mr. Schmidt is very familiar with the 3500 material,
5 so he knows that in interviewing Brooke Marcus, the government
6 learned that one of the reasons he was selected to speak to
7 Jane Thompson is because he's a charmer. He wasn't going to
8 railroad her, because railroading wouldn't have worked on her.
9 She needed someone sweet.

10 And so as your Honor saw with his text messages with
11 her, he texted her things like, I'm thinking about you, Jane,
12 and praying for you. He talked to her with a smile on his face
13 while he took her money.

14 And as disgusted as he may have become with what Arash
15 was doing -- and I take the point that he did, at some point,
16 leave Arash -- when he went to work for Bill Sinclair, it was
17 him who suggested selling Jane Thompson debt relief. He still,
18 I think, even today, based on the arguments by his counsel,
19 does not appreciate the gravity and the seriousness of his
20 conduct. And he continues to blame others for it.

21 With respect to Jo Anne LaMorte, five seconds on Jo
22 Anne LaMorte.

23 Jo Anne LaMorte realized within three days that her
24 contract didn't say the lies that Andrew Owimrin told her.
25 This was at a time when Bill Sinclair was making salespeople

J3RVOWIS

1 pay for all of their chargebacks.

2 The government's view of Andrew's decision to let her
3 cancel is not that he was a nice guy; it's that it wasn't worth
4 the risk. By that point, if he had tried to keep her on board
5 and she charged back, not only would he have lost his 20
6 percent commission, which was pretty insignificant, but he
7 would have owed Bill Sinclair the full amount of the sale. A
8 customer like Jo Anne LaMorte, who figured it out in three
9 days, is not worth the trouble for him, and that's why he was
10 nice to her and he just let it go.

11 With respect to the 3500 material, your Honor has seen
12 the submissions on this point. A lot of the 3500 material that
13 Mr. Schmidt has is because people came in and proffered and
14 told us about all of their conduct that we otherwise would not
15 have had any reason to know. And that's not to in any way
16 impugn Andrew Owimrin for not doing that or suggest that he was
17 in some way obligated to waive his Fifth Amendment rights; it's
18 only to point out that basis for comparison is somewhat unfair.
19 It holds people accountable for things that they admitted to us
20 in accepting responsibility, to the benefit of someone who
21 still hasn't. And so it's of limited weight, in the
22 government's view.

23 One last thing I'll say is, as I understand your
24 Honor's rulings on the guidelines, the guidelines calculation
25 is now 87 to 108 months.

J3RVOWIS

1 THE COURT: That's correct.

2 MS. FLETCHER: In its submission, the government
3 sought a guideline sentence for Andrew Owimrin. In light of
4 your Honor's sentencing earlier today for Arash Ketabchi of 87
5 months, the government's view is that given their relative
6 culpability, the Court should now sentence Andrew Owimrin below
7 the guidelines to avowed an unwarranted sentencing disparity
8 with Arash Ketabchi.

9 THE COURT: I intend to do that.

10 MR. SCHMIDT: Your Honor, may I briefly respond?

11 THE COURT: Yes.

12 MR. SCHMIDT: One, the debt relief.

13 As all the information I reviewed showed, part of the
14 sales that Brooke Marcus made to Jane Thompson was by credit
15 cards. She had credit cards outstanding because she purchased
16 over \$100,000 of other things, most of it by credit card,
17 before she came to talk to Andrew Owimrin. So that's where the
18 credit card debt relief comes from.

19 And the government says that all these people that
20 came and they told everything -- well, first of all, one of the
21 people, Joseph McGowan, lied. He lied about some of the stuff
22 that he tried to cover up for some of his friends. He didn't
23 talk about his drug dealing. And he then told his friends what
24 was going on in the cooperation so they would know, so if they
25 went in, what was actually spoken.

J3RVOWIS

1 And also, it wasn't just the people admitting to their
2 offenses. All these other people were telling them what other
3 people did. They knew what other people did because the other
4 people did these things. But they did not say anything that
5 Andrew Owimrin did that was illegal, because they didn't know
6 anything that Andrew Owimrin did was illegal other than the
7 drug use, because Andrew Owimrin didn't do anything illegal
8 before that occurred.

9 THE COURT: All right. I understand your position.

10 Let me ask a separate question.

11 What's the position of the parties on restitution and
12 forfeiture? Numbers.

13 MS. FLETCHER: Your Honor, with respect to forfeiture,
14 the government, and it's in our submission on page --

15 THE COURT: I have the numbers down. I want you to
16 put it on the record.

17 MS. FLETCHER: Oh, yes, your Honor.

18 The government, with respect to forfeiture, requests
19 that Andrew Owimrin forfeit \$112,647.12. And that figure comes
20 from, your Honor will recall, a spreadsheet that the government
21 introduced at trial showing check payments to Andrew Owimrin
22 during his employment at Olive Branch and A-1.

23 THE COURT: That's the money he received?

24 MS. FLETCHER: Yes, in check. It doesn't include
25 additional cash payments; but it's, in the government's view, a

J3RVOWIS

1 reasonable approximation of forfeiture here.

2 THE COURT: What's the position of the defense on the
3 forfeiture sought by the government?

4 MR. SCHMIDT: Your Honor, we ask for a reduction of
5 \$25,000 from that figure, because as the government indicated,
6 the defendants were always required -- the salesmen were always
7 required to give back --

8 THE COURT: Where does the 25,000 come from? I
9 understand the chargeback. When there's a chargeback, they've
10 got to pay it back. But where did you get 25,000 from?

11 MR. SCHMIDT: Because Mr. Sinclair wanted the money
12 returned in cash. We do not have records of it. It all comes
13 from Mr. Owimrin, who said that he would guess somewhere
14 between 25 and \$30,000 he had to give back in chargebacks. I
15 took the conservative number of \$25,000.

16 THE COURT: But this is his guess; is that right?

17 MR. SCHMIDT: This is his guess. But we do know that
18 they had to pay back money for chargebacks, and there were lots
19 of discussions about how many chargebacks had occurred.

20 THE COURT: Let's call it an estimate rather than a
21 guess.

22 What's the response of the government?

23 I doubt that this amount of money, with the
24 restitution, is ever going to be repaid, but it would be nice
25 to think it is.

J3RVOWIS

1 MS. FLETCHER: We would agree, your Honor.

2 The figure that we calculate, because it only includes
3 checks and doesn't include any cash at all, in our view, any
4 discrepancy that Mr. Schmidt has identified would be offset by
5 the fact that this only includes actual documented checks paid.

6 MR. SCHMIDT: Your Honor, there's no testimony that
7 they were paid in cash. Nobody testified that they paid the
8 salesmen in cash, because then they couldn't deduct it.

9 THE COURT: Wait, wait.

10 That may be a valid point.

11 Government?

12 MR. SCHMIDT: They couldn't deduct it --

13 THE COURT: I got the point.

14 MR. SCHMIDT: -- taxes.

15 THE COURT: I got the point.

16 No, wait. What did you say about taxes?

17 MR. SCHMIDT: If Sinclair gave money back in cash, he
18 would not be able to deduct -- if he -- excuse me.

19 If he gave money for the salespeople's commissions in
20 cash, he would not be able to deduct the salespeople's
21 commissions from the tax returns.

22 THE COURT: Well, I don't have his tax returns
23 specifically in mind, but there seems to be a dearth of people
24 filing tax returns in this case.

25 Government, what's your position?

J3RVOWIS

1 MR. SCHMIDT: I think we actually had --

2 THE COURT: Government, what's your position?

3 MS. FLETCHER: Your Honor, there was not testimony at
4 trial about Arash paying people in cash. Arash, in fact, did
5 pay people in cash.

6 THE COURT: But there's no testimony.

7 MS. FLETCHER: No.

8 But, your Honor, you will recall that in the table
9 that we submitted, there is \$150,000 payment to A-1 from Jane
10 Thompson. Andrew Owimrin was entitled to, I believe, 20
11 percent of that. And there's only a \$10,000 deposit into his
12 account. So that's one example of him clearly receiving some
13 additional payment in cash.

14 THE COURT: All right.

15 Here's what I'm going to do. Some of this is
16 academic. I'm going to make the forfeiture an even \$100,000.
17 I can't parse because I don't have any evidence here, and I
18 don't think either of the parties want a *Fatico* hearing on it.

19 Am I correct, Mr. -- nobody wants a fact hearing on
20 the amount of the restitution, do they -- amount of the
21 forfeiture?

22 MR. SCHMIDT: No, we do not.

23 THE COURT: Government?

24 MS. FLETCHER: No, your Honor.

25 THE COURT: All right.

J3RVOWIS

1 I'm going to make it \$100,000. I can't parse out the
2 cash payments versus what the actual amount that isn't
3 reflected in 112 is. So I'm going to make it an even \$100,000.

4 What's the position of the parties on restitution?

5 Government, your figure is 563,427.99.

6 MS. FLETCHER: Yes, that's the same amount as Arash.
7 And that number was arrived at by identifying all of the
8 individual victim checks that we could find into his entities.

9 It is arguably under-inclusive with respect to
10 Mr. Owimrin, because it doesn't include any victim payments
11 made to Olive Branch or the other entities for which Andrew
12 Owimrin worked. And so our view is that it is --

13 THE COURT: It doesn't include Olive Branch?

14 MS. FLETCHER: It doesn't. Because our view was that
15 at all times Andrew Owimrin's closest co-conspirator was Arash.
16 He was always working for Arash. He was hired by Arash.

17 THE COURT: No, I understand. And then he went to
18 A-1; actually, then he came back to Olive Branch.

19 MS. FLETCHER: For a very brief period of time, yes,
20 your Honor. Then he went to another telemarketing core that's
21 not part of this.

22 So the way we arrived at that number is we actually
23 went victim by victim for Arash. And because of Mr. Owimrin's
24 close --

25 THE COURT: All right. I understand.

J3RVOWIS

1 Mr. Schmidt, what's your position?

2 MR. SCHMIDT: Your Honor, I asked the government
3 previously for the means of them coming up with that figure. I
4 had not received it, so I do need to see --

5 THE COURT: All right. I'll give you 60 days. I'll
6 give the parties 60 days to come up with an agreed-upon
7 restitution amount or to present separate figures. And I'm
8 going to impose the \$100,000 forfeiture. And the government
9 should give me an order for that.

10 MS. FLETCHER: We will, your Honor.

11 THE COURT: Now, we haven't heard from Mr. Owimrin.

12 Mr. Owimrin, I realize it's late, but you can say
13 whatever you'd like, sir. Similarly, you can ask that it be
14 adjourned till tomorrow and I would do that. Whatever you
15 wish.

16 THE DEFENDANT: I'd like to just say my piece.

17 THE COURT: Of course.

18 THE DEFENDANT: Thank you, your Honor.

19 THE COURT: Just speak loudly and slowly.

20 THE DEFENDANT: Absolutely. I will.

21 First off, I want to thank your Honor for his time
22 during this entire process. It must have been very long and
23 strenuous, I'm sure a lot of hours. I want to thank my
24 attorneys, Mr. Schmidt, Mr. Hassen, and Sam Tureff, Mr. Tureff.
25 You know, throughout this process they've helped me out

J3RVOWIS

1 significantly and I appreciate their time.

2 I also want to thank my girlfriend, who has helped me
3 out tremendously. I probably wouldn't have any of those
4 character letters or any of these people here.

5 THE COURT: She gave a very strong support for you and
6 praised your sobriety.

7 THE DEFENDANT: Yes.

8 I just want to thank everybody for being here, all my
9 friends and family. It means a lot to have them behind me.

10 THE COURT: You had over 40 letters praising your acts
11 of kindness.

12 THE DEFENDANT: And that is all because of her,
13 because of my girlfriend Lizzy. I was too ashamed to ask
14 anybody for a letter. I was too ashamed to ask anybody to come
15 here.

16 THE COURT: Why did you do this? Why did you do this?

17 THE DEFENDANT: It was an opportunity. I believed it
18 was an opportunity.

19 THE COURT: Yes, but at some point you realized it was
20 a -- you may not have realized it was a federal crime, but you
21 knew it was illegal.

22 THE DEFENDANT: And at that time I had dived deep into
23 drug abuse. And I believed it was more about getting the drug
24 than it was about having a job. I put that drug before my
25 family, before my friends, before everybody. I lost everything

J3RVOWIS

1 because of that drug. I'm still fighting that addiction today.

2 That's why I didn't leave. I was making good money;
3 it was an opportunity for me that, at 25, 24 years old, with
4 really no hope, I thought it was something that I could really
5 grab onto and do something with. I believed it was a career.

6 THE COURT: Were you sober when you turned down the
7 auxiliary policeman job?

8 THE DEFENDANT: Absolutely. Yes, sir.

9 Not that I turned it down. I was in a place where I
10 needed a job. I was -- we were getting evicted. I was staying
11 at my uncle's house. I needed a place to go. And it was an
12 opportunity, it was a quicker opportunity. And it was sold to
13 me as something that was legitimate, something I could grow
14 with, 401(k), benefits like that. They said they were going to
15 grow and I could grow with them. I believed them. I did.

16 THE COURT: I didn't mean to cut you off, sir.

17 Continue with what you wanted to tell me. I see
18 you're reading, so go right ahead.

19 THE DEFENDANT: I do also want to express my deepest
20 apologies to the victims. I can't really put myself in their
21 shoes; I can only think about what it would be like for one of
22 my family members to go through that or myself or my
23 grandmother. It's hard for me to talk about. I'm ashamed of
24 it, even to speak about it in front of them. I even described
25 this job to them as a great opportunity. And I was ashamed to

J3RVOWIS

1 admit that it wasn't, and that I committed these crimes.
2 Knowingly or unknowingly, I did commit these crimes. I'm
3 ashamed of it. I regret it.

4 I've learned a lot from it. These past two years have
5 been extremely up and down. I have definitely learned a lot.
6 I definitely sympathize with these victims. I know people
7 believe I do not accept responsibility, but I absolutely do
8 accept responsibility for what I did.

9 In retrospect, everything is clear. In those moments,
10 nothing was -- I was taking \$20 out of my mom's wallet to buy
11 heroin, after she worked two jobs. Nothing was clear at that
12 moment.

13 Getting involved in this business has changed my life,
14 my family's life. And -- excuse me.

15 THE COURT: Take your time.

16 THE DEFENDANT: I worry about my family. I worry
17 about my father, who's not here. I worry about my family,
18 about them worrying about me, about my sobriety, about my life,
19 about my future.

20 I'm not afraid of hard work. Every bit of that
21 restitution will be paid back. I'm not afraid of hard work.
22 I've been working with my hands. I cut my finger in half, it's
23 stuck like this, from hard work when I was a young child. I'm
24 not afraid of it. I've done it my whole life. I've gone back
25 to it. I want to be able to continue to do that, continue to

J3RVOWIS

1 support my family, my friends, my girlfriend, my dog.

2 I believe I can be a productive part of society and
3 pay the restitution.

4 I do want to thank you again for your time.

5 I will be going back to this. I will be going back to
6 what I did before: Manual labor. It's a passion for me; I
7 enjoy it. It comes naturally to me; it comes naturally to most
8 of my -- the guys in our family -- my family. That's what I
9 will go back to, and that's what I will do to get my life
10 together, pay the restitution to these victims, more
11 importantly.

12 I just want to thank you for your time, your Honor.

13 And thank you again for my family and friends being
14 here to support me.

15 That's all I have, your Honor.

16 Thank you for your time.

17 THE COURT: Why is the government, in its relative
18 culpability letter, putting Mr. Owimrin at the bottom of Tier
19 3?

20 MS. FLETCHER: Your Honor, so AUSA Sobelman thought
21 that they were alphabetical also, so I'm the one who's going to
22 take responsibility for this.

23 Here was the thinking: Tier 1 is essentially owners
24 or operators --

25 THE COURT: No, I read it here. Owners or operators

J3RVOWIS

1 and those engaged in egregious conduct. Tier 2 is owners or
2 managers who didn't engage in the most egregious conduct. And
3 Tier 3 is those who worked for the telemarketing companies, but
4 were not owners. I see that.

5 MS. FLETCHER: Kavner, Quirk, and Medeiros all had
6 what I think is fairly described as middle management roles.
7 So they are not the owners or the operators of the companies,
8 but they are junior managers. So they have to be above Andrew
9 Owimrin.

10 Brooke Marcus was in a similar role to Andrew Owimrin,
11 but I think if you had to say which one of them was more
12 culpable, she was. And so the two of them as being salespeople
13 or, in her case, more of a save person, are comparable in
14 culpability, but she is worse.

15 And then Tier 4 are really people who are not in even
16 the same category as the salesperson, for different reasons for
17 each of the three of them.

18 THE COURT: All right.

19 MR. SCHMIDT: May I say one thing, your Honor?

20 THE COURT: Yes.

21 MR. SCHMIDT: The difference in culpability, for
22 example, of Brooke Marcus and Andrew Owimrin was that she was
23 the one who was leading the sales to Jane Thompson. She was
24 the only one that could have made it work. Andrew was a little
25 bit of a mouthpiece for her, but she was the one who made it

J3RVOWIS

1 work.

2 THE COURT: So you're agreeing with the
3 government's --

4 MR. SCHMIDT: I'm agreeing with the government.

5 But you could see the difference even how much apart
6 they are, because she was the one really planning and doing
7 everything for that; and clearly that was, like, the worst
8 example in this whole case. And Andrew was really just
9 following her lead and, to some extent, Arash's lead. And so
10 really he's substantially less than Brooke Marcus.

11 MS. FLETCHER: Your Honor, can I respond to that?
12 Because I think this is an important point.

13 THE COURT: Go ahead.

14 MS. FLETCHER: Brooke Marcus has a lot of problems.
15 She will have her day before your Honor.

16 One thing that I think cuts against what Mr. Schmidt
17 just said is that there was a point where Brooke Marcus's
18 relationship with Jane Thompson turned to a sort of strange
19 friendship and where she actually, to her credit, felt bad
20 about what they had done to Jane Thompson, and told Jane to
21 make an attorney general complaint.

22 So, yes, she was absolutely instrumental to making the
23 Jane Thompson fraud work; but she also recognized her role and
24 her culpability at that moment in a way that she should be
25 commended for. And so there is really not a significant

J3RVOWIS

1 disparity between the two of them, I think as Mr. Schmidt has
2 just indicated.

3 MR. SCHMIDT: I just note that Jane and Ms. Marcus, at
4 the time that she felt bad about it, got Jane Thompson involved
5 with another one of her friends --

6 THE COURT: All right.

7 MR. SCHMIDT: -- for debt relief.

8 THE COURT: All right. I'm cutting this off.

9 (Pause)

10 THE COURT: My intention is to sentence this defendant
11 to 52 months' incarceration and the remaining recommendations
12 of the probation department.

13 Please rise.

14 I hereby find the offense level is 29, the Criminal
15 History Category is I, the guideline range is 87 to 108 months.

16 Pursuant to the Sentencing Reform Act of 1984, it is
17 the judgment of this Court that the defendant, Andrew Owimrin,
18 is hereby committed to the custody of the Bureau of Prisons to
19 be imprisoned for a term of 52 months.

20 Upon release from imprisonment, Mr. Owimrin shall be
21 placed on supervised release for a term of three years, with
22 the conditions recommended by the probation department, namely,
23 the following mandatory conditions:

24 He shall not commit another federal, state, or local
25 crime; he shall not illegally possess a controlled substance;

J3RVOWIS

1 he shall not possess a firearm or dangerous weapon or
2 destructive device; he shall refrain from any unlawful use of a
3 controlled substance; he shall submit to one drug test within
4 15 days of his placement on supervised release and at least two
5 unscheduled drug tests thereafter as directed by his probation
6 officer; he shall cooperate in the collection of DNA as
7 directed by his probation officer.

8 He shall comply with standard conditions 1 through 13,
9 plus the following special conditions:

10 He shall submit his person, residence, place of
11 business, vehicle, and any property under his control to search
12 if there's reasonable suspicion that contraband or evidence of
13 a violation of any condition of supervised release may be
14 located.

15 He will participate in an outpatient treatment program
16 which can include testing to determine whether he has reverted
17 to using drugs or alcohol.

18 He must not incur new credit charges or open
19 additional lines of credit without the approval of his
20 probation officer, unless he's in compliance with the
21 installment payment schedule. He must provide his probation
22 officer with access to all requested financial information.

23 He must pay all back taxes owed and work out a payment
24 plan with the IRS, and that includes during his term of
25 supervised release.

J3RVOWIS

1 He shall pay to the United States a special assessment
2 of \$200, which is due immediately.

3 Within 72 hours of his release from custody of the
4 Bureau of Prisons, he shall report in person to the probation
5 office in the district to which he is released.

6 I'm not imposing a fine because I find he lacks the
7 ability to pay a fine, after taking into account his lack of
8 assets, his limited earning ability, and the restitution and
9 forfeiture orders I'm about to impose.

10 Actually, the restitution order is put off for 60 days
11 and the parties are to present an order to me or different
12 positions.

13 In terms of forfeiture, I am imposing a forfeiture of
14 \$100,000. The government shall submit an order to me
15 immediately.

16 I have sentenced this defendant below the guideline
17 range. I've sentenced him to a sentence that I believe is
18 reasonable and appropriate and sufficient, but not greater than
19 necessary to meet the ends of the criminal justice system. The
20 variance is due to his drug addiction, the fact that this is
21 his only involvement in the criminal justice system, and his
22 stated remorse, and his stated desire to repay the victims.

23 Mr. Owimrin shall surrender for service of sentence at
24 the institution designated by the Bureau of Prisons on or
25 before 2 p.m. on April 30th.

J3RVOWIS

1 Government, I take it you're not asking for remand at
2 this time?

3 MS. FLETCHER: We are not, your Honor.

4 THE COURT: Mr. Schmidt, do you know of any legal
5 reason why this sentence should not be imposed at this time?

6 MR. SCHMIDT: Your Honor, I would ask that you also
7 recommend Mr. Owimrin for the RDAP program; and that he be
8 designated someplace near his family in New Jersey.

9 THE COURT: Government, do you know of any legal
10 reason why this sentence should not be imposed as I have
11 stated?

12 MS. FLETCHER: I do not.

13 But I did not hear Mr. Schmidt answer that question.

14 MR. SCHMIDT: No, your Honor.

15 THE COURT: Thank you.

16 I hereby order the sentence to be imposed as I have
17 stated it.

18 Mr. Owimrin, you have the right to appeal the sentence
19 I just imposed on you. And if you cannot pay the cost of an
20 appeal, you have the right to apply for leave to appeal *in*
21 *forma pauperis*. If you make a request, the Clerk of Court will
22 prepare and file a notice of appeal on your behalf immediately.
23 And if you do wish to appeal, all you have to do is tell Mr.
24 Schmidt that, and in that event, Mr. Schmidt, I'm directing you
25 to file a notice of appeal on your client's behalf, if that's

J3RVOWIS

1 what he wants. Do you understand?

2 MR. SCHMIDT: Yes, your Honor.

3 THE COURT: All right.

4 I'll recommend that he be housed in the northeast
5 region in order to facilitate family visits with his -- from
6 his family, which resides in New Jersey.

7 I will recommend that he go into the RDAP program if
8 he meets the requirements of the Bureau of Prisons for that
9 program.

10 Anything else, Mr. Schmidt?

11 MR. SCHMIDT: No, your Honor.

12 THE COURT: Anything else, Ms. Fletcher?

13 MS. FLETCHER: No, your Honor.

14 THE COURT: Mr. Owimrin, you've committed very serious
15 crimes. I think I've sentenced you quite lightly, given the
16 guideline range and all the factors in 18 U.S.C. 3553(a).

17 I hope I've made the right call here. I expect you to
18 stay out of trouble.

19 I'm giving you three years of supervised release
20 because I want to make sure you're under the supervision of the
21 probation department.

22 Stay away from drugs. You blamed a lot of things on
23 drugs; but you have to take responsibility yourself for what
24 you've done.

25 Stay out of trouble. You've going to do 52 months in

J3RVOWIS

1 prison minus good time. When you get out, just stay away from
2 all this stuff. You're a smart person. Use your time in
3 prison as effectively as you can.

4 And I certainly hope -- I don't mean this as a threat
5 in any way, shape or form. But if I'm wrong and you come
6 before me again on a violation of supervised release, my
7 records will reflect the fact that I think I gave you a break
8 here.

9 So stay out of trouble.

10 Good luck to you. Thank you.

11 * * *